STATE OF MICHIGAN

COURT OF APPEALS

STANLEY TURNER, MARILYN TURNER and ANTON WONG, Plaintiffs/Counter-Defendants-Appellants, v WILLIAM H. ZIMMERMAN, SANDY ZIMMERMAN and WESTVIEW SHORES ASSOCIATION, INC., Defendants/Counter-Plaintiffs-Appellees.	UNPUBLISHED May 1, 2007 No. 265008 Isabella Circuit Court LC No. 03-002576-CH
STANLEY TURNER, MARILYN TURNER and ANTON WONG, Plaintiffs/Counter-Defendants-Appellees, v WILLIAM H. ZIMMERMAN, SANDY ZIMMERMAN and WESTVIEW SHORES ASSOCIATION, INC., Defendants/Counter-Plaintiffs-Appellants.	No. 265013 Isabella Circuit Court LC No. 03-002576-CH

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

In these consolidated appeals, plaintiffs/counter-defendants, Stanley Turner, Marilyn Turner and Anton Wong ("plaintiffs"), and defendants/counter-plaintiffs, William H. Zimmerman, Sandy Zimmerman and Westview Shores Association, Inc. ("defendants"), dispute rulings by the trial court regarding the ownership and use of a private park contained within a

dedicated plat of land identified as Garchow's Third Addition to Westview Shores. In addition, the parties dispute the trial court's rulings regarding the riparian rights[1] retained by the respective parties and the original developer, Bernard W. Garchow ("Garchow"). Affirmed in part, vacated and reversed and remanded in part.

The entire subdivision development involved in this controversy consists of the following plats:

a. Supervisor's Plat identified as Westview Shores, dated September 2, 1954.

b. Supervisor's Plat identified as First Addition to Westview Shores, dated May 25, 1955.

c. Supervisor's Plat identified as Second Addition to Westview Shores, dated March 19, 1956.

d. Garchow's Third Addition to Westview Shores, dated January 14, 1958 (Appendix A).

The initial three plats were dedicated by the Gilmore Township Supervisor with the final plat, which comprises the subject matter of this controversy, dedicated by the owner of the fee interest of the development, Garchow. Plats of the Second and Third Additions to Westview Shores had adjacent private parks established as part of the subdivision with each identified as "Water Edge Private Park."

The Third Addition to West View Shores contains 18 lots, surrounded by Littlefield Lake, Bass Lake and a pond, which borders lot 18. The dedication of the plat by Garchow states, in relevant part:

> [T]hat the streets as shown on said plat are hereby dedicated to the use of the lot owners and the private park is dedicated to the use of the owners of lots 16 to 18 inclusive.

Notably, the dedication of the Second Addition to West View Shores, which contains the park adjacent to the currently disputed property, provides in relevant part:

> [T]hat the streets and alleys "Parking Lot" and "Waters Edge" Parks as shown on said plat are now being used for such purposes.

Plaintiffs, as owners of lots 16 through 18 of the Third Addition to West View Shores, based on the plat dedication, assert exclusive ownership and control of Waters Edge Park and all

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[1] For consistency, the term "riparian rights" will be used throughout this memorandum to coincide with the briefs submitted by the parties. However, it should be noted that because the property at issue abuts a lake, the proper term to describe the asserted interest would be "littoral" rights.

associated riparian rights for this parcel.[2] The Turners purchased lots 17 and 18 on June 12, 1975, with their deed indicating:

> [I]t is understood between the parties hereto that the grantees are to have rights of ingress and egress to Littlefield Lake by way of wateredge [sic] Park.

The lower court file fails to include a copy of the deed transferring lot 16 to the Wongs.

Plaintiffs initiated this action asserting they "have the exclusive right to use and ownership of the Private Park by virtue of the explicit language in the Plat dedicating the Private Park 'to the use of the owners of lots 16 to 18 inclusive.'" Plaintiffs sought a declaratory judgment and to quiet title against defendants, the Zimmermans, as owners of lots 13 and 14 within the platted property and Westview Shores Association, Inc., which is composed of all the property owners of the West View Shores subdivisions, to preclude them from accessing or using Water Edge Park. Plaintiffs asserted they had posted "conspicuous signs" in the Park, indicating that it was private property and that the owners' permission was required to enter or use the property. Plaintiffs asserted defendants continued to trespass on the property and sought monetary damages for each trespass event. Plaintiffs also sought preliminary and permanent injunctions against defendants to preclude their continued trespass upon the Park.

Defendants opposed entry of an injunction and filed a countercomplaint asserting the plat dedication provided plaintiffs only a nonexclusive easement and not an ownership interest in the Park and that the easement did not confer riparian rights upon plaintiffs. Defendants further sought an injunction against plaintiffs' attempts to block access to the Park and harassment of defendants while in the Park and to preclude plaintiffs' maintenance of a boat dock. In the alternative, defendants sought the court's determination that they had a prescriptive easement to the use and enjoyment of the Park, in accordance with MCL 600.5801, based on the actual, visible, open, notorious and continuous care and use of the Park by defendants, and/or their predecessors in interest, for a period in excess of 15 years.

Defendants sought summary disposition pursuant to MCR 2.116(C)(10) and plaintiffs responded requesting summary disposition be granted in their favor in accordance with MCR 2.116(I)(2). On July 29, 2004, the trial court issued an opinion and order granting defendants' motion and denying plaintiffs' request for summary disposition. The trial court noted a prior case involving the portion of Water Edge Park contained in the Second Addition to West View Shores, which also had at issue the ownership and control of that portion of the Park. Referencing the ruling in that prior case on July 6, 2000, the trial court adopted the opinion to the extent it determined that West View Shores Association "had standing and authority to be a proper party in this action." The trial court also took "judicial notice of the contents of the court

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[2] The original deeds for lots 16 through 18 of the Third Addition to West View Shores transferred the property from Garchow, and his wife, to purchasers other than plaintiffs. The original deeds provided that "It is understood between the parties hereto that the Grantees are to have rights of ingress and egress to Littlefield Lake by way of Wateredge Park."

file in the previous litigation including the exhibits that were admitted at the trial in that matter and contained in the file."

Addressing the ownership of the park property contained in the Third Addition, the trial court ruled that the language of the plat created an irrevocable easement to plaintiffs. In evaluating the exclusivity of the easement, the trial court indicated the necessity of placing itself "as nearly as possible in the position of the proprietor when he made it, and have its subdivisions before us as they were before him at that time," as well as looking at "all of the facts and circumstances existing at the time of the grant in order to determine the intent of the plattors." The trial court noted that Garchow, approximately one year after the dedication of the Third Addition, explained restrictions for use by back lot owners. The trial court interpreted Garchow's statements "that the whole park was to be used by the back lot owners as he did not make any distinction between the park in the Second Addition and the Park in the Third Addition."[3] Viewing the entire subdivision scheme, the trial court noted that each of the four separate parts of the subdivision contain lots that do not border a body of water. Water Edge Park, located on Littlefield Lake, is contained in both the Second Addition and Third Addition of the development and is accessible to all lots within the subdivision by private roads.

Noting the similarity in deed language in the different developments within the subdivision for all back lot property owners and, specifically, that lot 4 of the Third Addition also provided deeded access to Littlefield Lake through Water Edge Park, the trial court opined:

> In order to ensure water access for all lot owners, the Garchows created Wateredge [sic] Park and provided in the backlot [sic] owners' deeds that they would have access to Littlefield Lake though [sic] Wateredge Park [sic]. . . . Therefore, this method of platting and deeding clearly illustrated that the Garchows wanted to ensure that all landowners had access to a body of water.

The trial court indicated that even if plaintiffs had an exclusive right to the park, they lost that right when they and their predecessors in interest did not claim exclusive use of the park since the purchase of their respective lots. Noting plaintiffs had only attempted to assert exclusive rights to the property since July 1995, coupled with judicial notice that West View Shores Association had exercised control and maintenance over the entire Park for a period in excess of thirty-seven years without objection, the trial court opined that, because of this acquiescence to the use of the park, plaintiffs were now estopped from claiming exclusive use of the property. As a result, the trial court ruled that plaintiffs "have a nonexclusive, irrevocable easement to Wateredge Park."

Subsequently, the parties stipulated to allow the trial court to provide a supplemental opinion and order to address the issue of plaintiffs' riparian rights. In the August 12, 2004, opinion and order the trial court determined that plaintiffs had riparian rights to Littlefield Lake through their easement in Water Edge Park. Citing, *Little v Kin (Little I)*, 249 Mich App 502,

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[3] The trial court observed that back lot owners included plaintiffs, who comprise the only back lot owners in the third addition.

513-514; 644 NW2d 375 (2002), the trial court noted the wording of the plat dedication and deeds, which referenced "rights of ingress and egress to Littlefield Lake by way of Wateredge Park," and the rights of the subject lot owners to "use" the Park. Based on the absence of restrictions regarding "use" of the property, the trial court asserted that "all legal uses including uses derived from riparian rights," such as the installation of a dock, were available to plaintiffs.

In addition, the trial court determined plaintiffs' riparian rights, as included within the easement, were also irrevocable. Noting that "the Association may have the authority to modify the restrictions of the park regarding the other lot owners, the Association, under the circumstances of this case, does not have the authority to modify the Plaintiffs' rights to Water Edge Park contained in the Third Addition."

Plaintiffs filed a motion for reconsideration of the trial court's initial order and defendants filed objections. Defendants then filed a motion for reconsideration of the trial court's supplemental order and plaintiffs filed a motion seeking clarification of the supplemental opinion. Plaintiffs also filed a pleading entitled "Objection to Judicial Notice of Exhibits." The trial court denied the judicial notice objections and motions for reconsideration, but granted the motion for clarification on January 31, 2005.

Addressing the objections, the trial court noted that plaintiffs objected on the basis of relevance to the inclusion of title summaries and deeds not located in the Third Addition of the development. The trial court indicated that these documents provided background information to permit the court to place itself "in a position to see the subdivision as a whole as the Garchows saw the subdivision." Plaintiffs also objected to use of the drawing of the lots of the combined subdivision, asserting the representation of the Park, as one park rather than two adjacent parks was "misleading." In response, the trial court indicated the necessity of looking at the "general layout of the complete subdivision" and denied its use of the drawing in the manner asserted by plaintiffs. The trial court also rejected plaintiffs' objection regarding the copy of the Third Addition plat submitted to the trial court as being partially illegible, noting it had viewed clear and complete images of the plat and was aware of deficiencies in the Xeroxed version. The trial court also denied plaintiffs' objection to the inclusion of the September 6, 1959, minutes of an Association meeting referencing the "landing," which the trial court determined was related to the subject park property.

The trial court denied plaintiffs' motion for reconsideration based on their objections to the trial court taking judicial notice from the prior litigation. In addition, the trial court rejected the affidavit of Robert Garchow, son of the proprietor, because it was too general and unspecific and failed to provide anything other than a broad assertion regarding his parents' intentions regarding the park property. The trial court also rejected property tax assessments submitted by plaintiffs in asserting the tax assessor had assessed their lots as "owning" the lake frontage contained within the Third Addition Park. Noting the tax assessor's determination had no "precedential weight," coupled with the lack of other documentary evidence explaining the purported determination by the tax assessor, the trial court found the evidence "unpersuasive" and insufficient to alter or reconsider the prior ruling. All other documentary evidence submitted by plaintiffs in support of their motion for reconsideration was deemed "cumulative" by the trial court and not supportive of a finding of error. Based on the failure of plaintiffs to set forth any additional legal arguments or authority, the trial court determined there had been no showing of palpable error.

In support of their motion for reconsideration, defendants' argued that the failure to include or reference "riparian rights" in any of the documents served to demonstrate that there was no grant of such rights to plaintiffs. Denying defendants' motion, the trial court noted it was required to interpret what "use" of the park meant, ruling:

> Given that the Plaintiffs were given undefined use of the property, this court found that the Plaintiffs use included all legal uses of the property, including the riparian rights.

Finally, in addressing plaintiffs' motion for clarification the trial court stated, in relevant part:

> [T]he Plaintiffs have an irrevocable easement to the Water Edge Park in the Third Addition including the irrevocable use of the riparian rights, including the right to install a dock and moor boats. Also, as this Court ruled, the fee in the park remains with the Garchows, their heirs and/or assigns. Since the Garchows own the fee interest in the park, the Garchows would also have ownership of the riparian rights. Therefore, the Plaintiffs' riparian rights, although irrevocable, are not exclusive and the Plaintiffs' share the riparian rights with the Garchows, their heirs and/or assigns.

Plaintiffs and defendants filed separate claims of appeal, which were consolidated by this Court on October 7, 2005.

Plaintiffs contend the trial court erred in interpreting the unambiguous language of the plat dedication as creating rights for lots owners other than plaintiffs. The determination of a party's rights under a plat dedication is a question of fact. *Dyball v Lennox,* 260 Mich App 698, 703; 680 NW2d 522 (2003) (citation omitted). The intent of the grantor controls the scope of the grantor's dedication. *Higgins Lake Prop Owners Ass'n v Gerrish Twp,* 255 Mich App 83, 88; 662 NW2d 387 (2003). In addition, it is a well recognized precept that when the language of a legal document or instrument is plain and unambiguous, the document is to be enforced as written and no further inquiry is necessary or permitted. *Dyball, supra* at 704. However, if the language or text of the document is ambiguous, extrinsic evidence is permissible in order to determine the extent or scope of the conveyance. *Id.*

Before enactment of the 1967 Land Division Act, MCL 560.101 *et seq.*, private dedications to lot owners of lands for use as parks or streets, or for water access, were enforceable, even though they were not statutorily authorized. *Little v Hirschman,* 469 Mich 553, 557-558; 677 NW2d 319 (2004). Specifically, "dedications of land for private use in plats before 1967 PA 288 took effect convey at least an irrevocable easement in the dedicated land. *Id.* at 564. Notably, in *Walker v Bennett,* 111 Mich App 40; 315 NW2d 142 (1981), this Court similarly determined that the lot owners had an easement and recognized "the important legal proposition that a purchaser of platted lands receives not only the interest described in the deed, but also whatever rights are reserved to the lot owners in the plat." *Little, supra* at 561.

Based on the plat dedication language, the trial court correctly determined that the plaintiffs have an irrevocable right to use the parks. *Little, supra* at 564. Specifically, the indication on the dedication that the Park was for the "use of the owners of Lots 16 to 18

inclusive" suggests an intent that the owners of these parcels would hold less than full ownership rights. The trial court's ruling that plaintiffs' maintain an irrevocable easement is further supported by the deed language for the subject properties, which indicates that the owners have "rights of ingress and egress to Littlefield Lake by way of wateredge [sic] Park."

This Court previously indicated, "the rights of nonriparian owners should be determined by examining the language of the easement and the circumstances existing at the time of the grant." *Dyball, supra* at 703-704, citing *Little I, supra* at 511-512. However, our Supreme Court, in affirming *Little I,* stated, "when language of the easement grant is plain and unambiguous, a directive to consider circumstances existing at the time of the grant was inconsistent with well-established principles of legal interpretation." *Dyball*, *supra* at 704, citing *Little v Kin (Little II),* 468 Mich 699, 700 n 2; 664 NW2d 749 (2003). The language and text of the plat dedication and deeds to the property clearly indicate plaintiffs are entitled to "use" of the Park for "ingress and egress" to Littlefield Lake. Because the easement grant is stated in plain and unambiguous language, the trial court erred in taking judicial notice of the prior case pertaining to dedication of the Second Addition and related deeds and other documents in determining the extent of plaintiffs' interest in the land. *Dyball, supra* at 705. In other words, it was unnecessary for the trial court to consider other documents or evidence regarding the proprietor's intent in dedication of the plat, given the plain and unambiguous language contained in the plat dedication and deeds themselves.

Plaintiffs next assert the trial court erred in granting defendants' claim of a prescriptive easement. Defendants asserted, as an alternative argument, the establishment of a prescriptive easement to the Park for all of the lots owners in the Third Addition to the West View Shores development. In ruling, the trial court did not specifically address defendants' theory of a prescriptive easement but, rather, determined that all lot owners in the development had easement rights in the Park based on the Association's exercise of control and maintenance of the Park and the historical use by all lot owners for a period in excess of 37 years. As such, the trial court ruled that because of the acquiescence of plaintiffs and their predecessors in interest, plaintiffs were estopped from now asserting exclusive use or ownership of the subject property.

A prescriptive easement is typically established where an express easement has failed because of a defect and was treated as though it had been properly established. *Plymouth Canton Comm Crier, Inc v Prose*, 242 Mich App 676, 684-685; 619 NW2d 725 (2000). In addition, a prescriptive easement is also found to arise in a manner similar to adverse possession, when there is "use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years." *Higgins Lake Prop Owners Ass'n, supra* at 118. Contrary to defendants' argument, there is no basis for the establishment of a prescriptive easement because of the absence of the element of adversity. Hostile or adverse use cannot be established if the use is permissive, regardless of the length of the use. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995). Hostile use of the property only began around 1995, when plaintiffs began to assert an ownership interest of the Park. However, the duration of time between plaintiffs' assertion of ownership and initiation of the lawsuit was not sufficient to meet the limitations period necessary for a prescriptive easement. Because all of the lot owners and the Association used the Park for an extended time period openly and without any dispute arising, this permissive and accepted use of the subject property was not adverse or hostile and, therefore, a prescriptive easement could not arise.

In actuality the trial court ruled that defendants and the other lot owners had rights of access to the Park through the doctrine of acquiescence. Historically, the doctrine of acquiescence developed as a means to promote the peaceful resolution of disputes regarding land boundaries. *Killips v Mannisto,* 244 Mich App 256, 260; 624 NW2d 224 (2001). The trial court determined that defendants' rights to the subject property were based on acquiescence for the requisite statutory period. Notably, acquiescence that is premised on the passage of the necessary statutory period can be established despite the absence of a bona fide controversy regarding a correct boundary. *Sackett v Atyeo,* 217 Mich App 676, 681; 552 NW2d 536 (1996).

Case law pertaining to acquiescence is typically concerned with the application of the statute of limitations to cases of adjoining property owners who are mistaken regarding where their property lines exist. If the property owner whose land is being incorrectly possessed by another fails to initiate an action to reclaim the property within a 15-year period, the opportunity to bring the action is deemed to expire. As a result, the record owner of the property would no longer be able to enforce his or her title, and the other property owner would obtain title to the parcel by virtue of possession. *Kipka v Fountain,* 198 Mich App 435, 438-439; 499 NW2d 363 (1993).

In this case, the evidence demonstrates that Waters Edge Park, as platted in the Third Addition, was routinely used by members of the subdivision development from the time of dedication in 1958 until 1995, when plaintiffs began to allege ownership rights. The West View Shores Association provided maintenance and management of the Park property. Use of the Park by all lot owners was accepted and without interference by the plaintiffs for a period of at least 20 years, or from their acquisition of their lots in 1975 to 1995, easily meeting the statutory limitation of 15 years for acquiescence.[4]

It is noteworthy that the trial court appeared to rule on the doctrine of acquiescence as an alternative to its determination that all of the lot owners, based on the intent of the original grantors of the property, maintained easements to the Park. As such, imposition of an equitable remedy, such as acquiescence, is unnecessary. Regardless, this Court will not reverse or disturb a trial court's decision even if it reaches the right result albeit for the wrong reason. *Hess v Cannon Twp,* 265 Mich App 582, 596; 696 NW2d 742 (2005).

As part of its ruling the trial court also determined that the Garchows retained a fee interest in the Park along with riparian rights to the property, despite neither party raising this claim and the absence of intervention by the Garchows, or their heirs or assigns. Defendants assert this was error arguing the Garchows relinquished all ownership rights to the Park upon dedication and sale of the various plats comprising the subdivision and objected to the determination of property rights and interests for persons not parties to the instant action.

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[4] Because "[t]he acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years," *Killips, supra* at 260, in actuality the third addition lot owners can demonstrate acquiescence of their use of the subject property for a period in excess of 37 years.

According to *Westveer v Ainsworth*, 279 Mich 580, 583; 273 NW 275 (1937) (citations omitted), provides:

> It is the great weight of authority that dedication by the owner-plattor becomes irrevocable upon sale of lots by reference to the plat and he is estopped to vacate it. . . . And the grantees of the dedicators are bound by the dedication.

In addition, the Court recognized:

> The purchasers of lots in the original plat took not only the interest of the grantor in the land described in their respective deeds, but, as an incorporeal hereditament appurtenant to it, took an easement in the streets, parks and public grounds mentioned and designated in the plat as an implied covenant that subsequent purchasers should be entitled to the same rights. The grantors could not recall this easement and covenant any more than they could recall other parts of the consideration. They added materially to the value of every lot purchased . . . . 'Where land is represented on a map or plat as a park, public square, or common, the purchasers of adjoining lots acquire as appurtenant thereto a vested right to have the space so designated kept open for the purpose and to the full extent which the designation imports. The sale and conveyance of lots according to such plat implies a covenant that the land so designated shall never be appropriated by the owner or his successors in interest to any use inconsistent with that represented on the original map. And the purchaser of an adjoining lot acquires such an easement in the park or public square in front of it as entitles him to proceed in equity to prevent by injunction the appropriation of the park or square to any use other than that designated on the map or plat by reference to which he purchased his lot; he is not a mere volunteer seeking to enforce the rights of the public; he has a special interest of his own to protect.' [*Kirchen v Remenga*, 291 Mich 94, 108-109; 288 NW 344 (1939) (citations omitted).]

Notably, in cases involving public dedication of land, once the property has been dedicated and the original owner, within a defined time period, takes no action to reassert his rights to the parcel, the original property owner is deemed to retain no interest in the land. Specifically:

> [O]nce a dedication has occurred and there is no evidence that the presumption of dedication has been rebutted, the original property owners no longer own the land dedicated to the public. Therefore, it is incorrect to claim that they retain a fee simple interest in the land. [*Kentwood v Sommerdyke Estate*, 458 Mich 642, 664; 581 NW2d 670 (1998).]

However, no similar preclusion has been discovered in case law pertaining to the dedication of private property.

What is problematic is that the trial court issued its ruling regarding the Garchows' retained interest sua sponte and without either party fully briefing or arguing the matter. It appears the trial court expanded its ruling addressing the riparian rights of the plaintiffs to include the Garchows in order to fully delineate and explain that plaintiffs' rights were not exclusive. Further, there is no indication in the lower court record that the Garchows', or their

heirs or assigns, have attempted since the plat dedication to claim or exercise a right of interest, of any nature, in the Park property. West View Shores Association asserts a fee interest in the Park property based on their purported care, maintenance and retention of the property over many consecutive years. It also cannot be determined from the lower court record whether any heirs or assigns of the Garchows' retained a property interest in any of the other lots within the subdivision as a means to determine the extent and nature of their rights as lot owners. An adjudication affecting the rights in real estate cannot be made with regard to individuals not parties to the suit. *Capitol S&L Co v Standard S&L Ass'n of Detroit, Michigan*, 264 Mich 550, 553; 250 NW 309 (1933). Because the dedication did not explicitly purport to transfer ownership of the Park from the Garchows to the identified lot owners and there is no evidence that the Garchows or their heirs or assigns intended to retain general control or ownership of the Park, this matter must be remanded to the trial court for further factual development to determine the fee owner of the Park property. *Dobie v Morrison*, 227 Mich App 536, 540; 575 NW2d 817 (1998).

Defendants also contend that the trial court erred in failing to make findings of fact and conclusions of law regarding the basis for plaintiffs' claim of riparian rights. Defendants assert that as the owners of an easement rather than fee title, plaintiffs' riparian rights were limited, and that all property owners in the four subdivisions should be treated equally with regard to riparian rights in the Park. Further, defendants argue that a party that has an easement to reach water does not necessarily, or automatically, have the right to construct a dock.

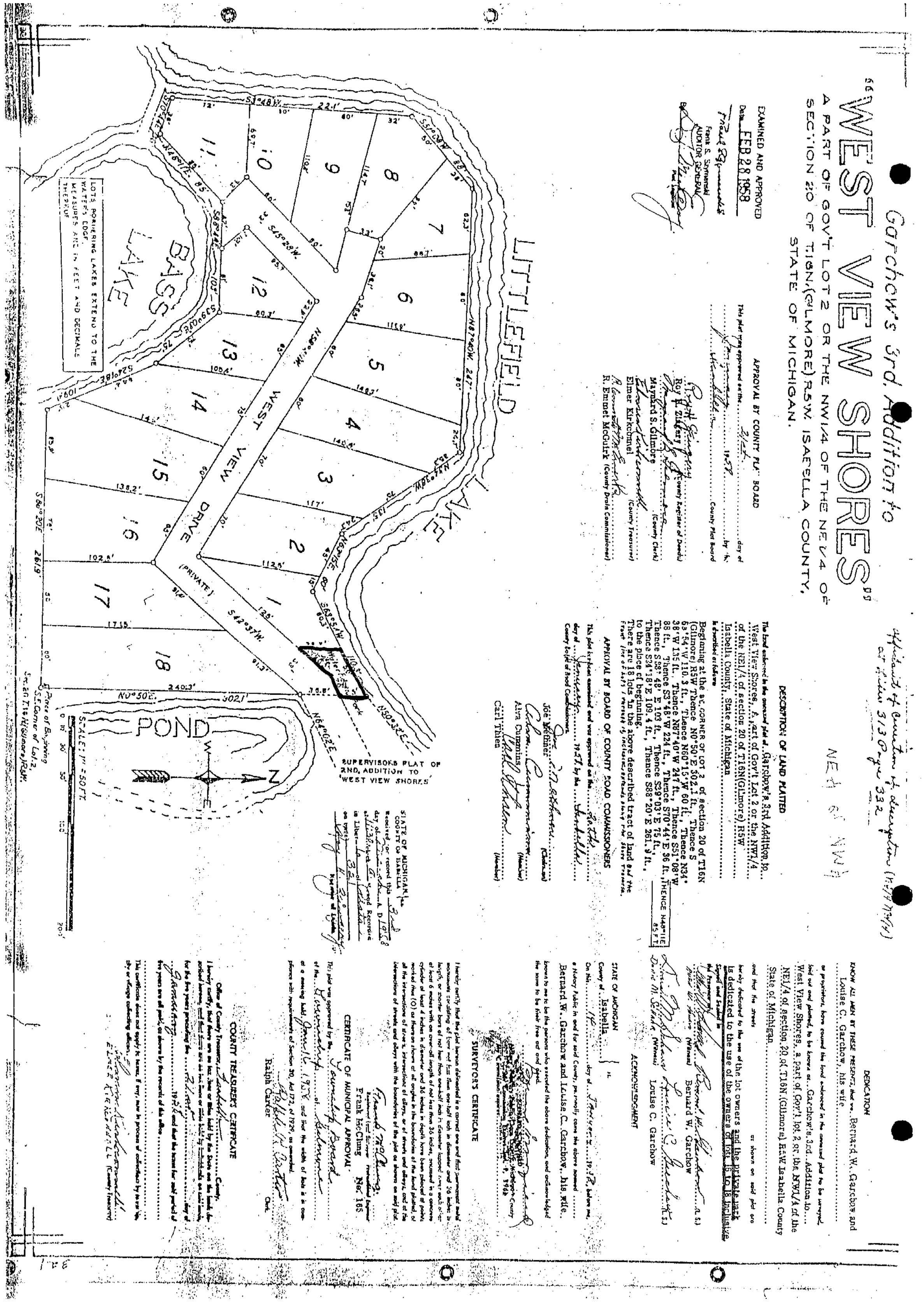
Owners of an estate or who have a possessory interest in riparian land retain entitlement to certain exclusive rights. These rights include the right to erect and maintain docks along the owner's shore and to permanently anchor boats off the shore. In contrast, nonriparian owners who gain access to a body of water have "a right to use the surface of the water in a reasonable manner for such activities as boating, fishing and swimming." *Dyball, supra* at 707-708, citing *Thies v Howland*, 424 Mich 282, 288; 380 NW2d 463 (1985). In order to determine what activities or rights are within the scope of a plat's dedication, "[t]he intent of the plattors must be determined from the language they used and the surrounding circumstances." *Dyball, supra* at 708 (citation omitted).

Notably, the plat dedication mentions only "use" of the Park and is silent regarding the grant of any form of riparian rights. The deeds of the subject properties only indicate that the "grantees are to have rights of ingress and egress to Littlefield Lake by way of wateredge [sic] Park." The plain and unambiguous language of the referenced easement does not grant plaintiffs riparian rights and, therefore, does not grant plaintiffs the rights of riparian owners. "The terms ingress and egress to the water's edge do not show an intent to grant a right to construct and maintain a dock, a right typically reserved to riparian owners." *Dyball, supra* at 708, citing *Thies, supra* at 294. The permitted use of the land by plaintiffs, in accordance with the easement, "is clearly defined by the terms of the easement and must be confined to the plain and unambiguous terms of the easement." *Dyball, supra* at 708. The easement was created to permit access or "ingress and egress" to Littlefield Lake and cannot be expanded to include rights typically reserved for riparian landowners. Hence, the rights of plaintiffs to access the water are restricted and include only "a right to use the surface of the water in a reasonable manner for such activities as boating, fishing and swimming," in addition to the right to temporarily anchor boats. *Thies, supra* at 288.

We affirm the trial court's rulings that plaintiffs have an irrevocable, nonexclusive easement in the Park and on the issue of acquiescence of use. We vacate and remand the trial court's determination regarding the retention of riparian rights by the original proprietors' for further factual development. We reverse and remand the trial court's ruling regarding the extent and nature of plaintiffs' riparian rights. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette

Appendix A


Garchow's 3rd Addition to
WEST VIEW SHORES
A PART OF GOV'T LOT 2 OR THE NW1/4 OF THE NE1/4 OF SECTION 20 OF T16N(GILMORE) R5W. ISABELLA COUNTY, STATE OF MICHIGAN.
LITTLEFIELD LAKE
BASS LAKE
WEST VIEW DRIVE
(PRIVATE)
POND
DESCRIPTION OF LAND PLATTED
APPROVAL BY COUNTY PLAT BOARD
APPROVAL BY BOARD OF COUNTY ROAD COMMISSIONERS
DEDICATION
ACKNOWLEDGMENT
SURVEYOR'S CERTIFICATE
CERTIFICATE OF MUNICIPAL APPROVAL
COUNTY TREASURER'S CERTIFICATE
SUPERVISORS PLAT OF 2ND. ADDITION TO WEST VIEW SHORES